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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93M-524
32170

In re Application of

MM DOCKET NO. 93-155

RICHARD BOTT II
(Assignor)

File No. BAPH-920917GO

and

WESTERN COMMUNICATIONS, INC.
(Assignee)

For Assignment of Construction Permit
of Station KCVI(FM), Blackfoot, Idaho

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MEMORANDUM OPINION AND ORDER

Issued: August 11, 1993 ; Released: August 13, 1993

1. Under consideration are: (a) a Petition to Intervene, filed on July 21, 1993, by Radio Representatives, Inc. ("RRI"); (b) a Supplement to (a), filed on July 22, 1993, by RRI; (c) an Opposition to (a), filed on July 30, 1993, by Richard P. Bott, II ("Bott"); (d) an Erratum to (c), filed on August 3, 1993, by Bott; (e) an Opposition to (a), filed on July 30, 1993, by the Mass Media Bureau ("Bureau"); (f) a Contingent Informal Request for Stay, filed on July 26, 1993, by RRI; (g) an Opposition to (f), filed on August 4, 1993, by Bott; and (h) an Opposition to (f), filed on August 4, 1993, by the Bureau.

2. RRI was an applicant for a construction permit for a new FM station in Blackfoot, Idaho. In that proceeding, MM Docket No. 87-223, the Commission ultimately upheld the award of the permit to Bott and the denial of RRI's competing application. Richard P. Bott, II, 5 FCC Rcd 2508 (1990). The U. S. Court of Appeals denied RRI's appeal of that determination. Radio Representatives, Inc. v. FCC, 926 F. 2d 1215 (D.C. Cir. 1991) (aff'd by judgment). Subsequently, Bott and Western Communications, Inc. ("Western"), filed the above-captioned application for the assignment of Bott's construction permit to Western. RRI filed a Petition to Deny the assignment application and, based largely upon RRI's allegations, the Commission designated this case for hearing. Hearing Designation Order and Notice of Opportunity for Hearing (Corrected), 8 FCC Rcd 4074 (1993) ("HDO"). The HDO did not name RRI as a party to this proceeding.

3. RRI seeks leave to intervene in this proceeding, and for the designation of two additional issues -- to determine whether Bott's "integration pledge is too tenuous and impermanent to warrant credit," and to determine "whether further action on the captioned application should be stayed and a petition for recall of mandate and for remand should be filed with the U. S. Court of Appeals for the D.C. Circuit ..." In support, RRI asserts that its participation in this proceeding will assist the Commission in the determination of the issues specified in the HDO because "RRI's petition to deny has been instrumental in bringing the designated issues to the Commission's attention." Petition to Intervene, at 2 (footnote omitted). In this regard, RRI points

specifically to engineering data it submitted which called into question Bott's rationale for the assignment. RRI further contends that its participation will advance the public interest by permitting the full exploration of the issues "through the crucible of an adversarial proceeding." Id. RRI also maintains that it "is uniquely well qualified as a competing applicant" to assist in the resolution of the issues in this case because it is intimately familiar with the record in the comparative proceeding and "is in a position to facilitate the Commission's fact-finding on the designated issues." Id. at 2-3. Both Bott and the Bureau oppose RRI's petition.

4. RRI's Petition to Intervene will be denied. Section 1.223(b) of the Commission's Rules provides, in pertinent part, that a petitioner seeking intervention must establish its interest in the proceeding, and must show how its participation will assist the Commission in the determination of the issues in question. RRI has failed to meet either of these tests. First, RRI's status as a former applicant for the Blackfoot construction permit is insufficient to confer standing to intervene in this proceeding. Suffice it to say, it is well established that a former applicant for a particular facility, such as RRI, is not a party in interest in, and will not be permitted to intervene in, a proceeding involving another application for the facility. Denton FM Radio, Ltd., 56 RR 2d 171 (Rev. Bd. 1984), citing Kenneth J. Crosthwait, 79 FCC 2d 191 (1980), and Frontier Broadcasting Co., 21 FCC 2d 570 (1970).

5. Second, RRI has failed to demonstrate that its participation will assist in the resolution of the designated issues. In this connection, the Commission has rejected familiarity with the facts of a case through participation in a comparative hearing as a basis for intervention. Crosthwait at 192-95.¹ Further, RRI has failed to show that it alone possesses any factual evidence that would be necessary for the development of a full and complete record, or that the engineering data it specifically referred to is not available for the Bureau's use. Moreover, RRI's petition completely ignores the role of the Bureau, which is "an entity expressly devised to take an independent role in Commission proceedings in the public interest,"² and does not even assert that the Bureau is unwilling, unable, or incapable of fulfilling its responsibilities. On the contrary, it appears that RRI, in seeking intervention, is attempting to advance its own private interest, rather than the public interest. Thus, the additional issues sought by RRI clearly show that RRI's motivation in seeking intervention is its continuing desire to obtain the Blackfoot construction permit and, to this end, persuade the Commission to file a petition for recall of mandate and for remand with the Court of Appeals. However, intervention will not be permitted for the protection of a petitioner's

¹ Although the petitioner in Crosthwait was not permitted to intervene, the Commission did consider the substance of his contentions as an informal objection. Crosthwait at 194-95. This is precisely how the Commission in this proceeding treated the allegations raised by RRI in its Petition to Deny. HDO at para. 8.

² Pressley v. FCC, 437 F. 2d 716, 719 (D.C. Cir. 1970), quoted in Muncie Broadcasting Corporation, 89 FCC 2d 123, 125 n.1 (Rev. Bd. 1982).

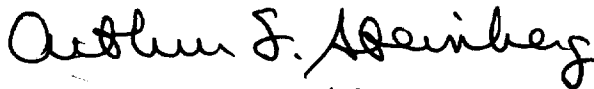
private interests. Arizona Mobile Telephone Co., 80 FCC 2d 87, 90 (Rev. Bd. 1980), citing Office of Communication of the United Church of Christ v. FCC, 359 F. 2d 994, 1001 (1966).

6. Finally, in light of the denial of RRI's Petition to Intervene, its Contingent Informal Request for Stay and the related pleadings will be dismissed as moot.

Accordingly, IT IS ORDERED that the Petition to Intervene filed by RRI on July 21, 1993, IS DENIED.

IT IS FURTHER ORDERED that the following pleadings ARE DISMISSED as moot: Contingent Informal Request for Stay, filed by RRI on July 26, 1993; Opposition to Contingent Informal Request for Stay, filed by Bott on August 4, 1993; and Mass Media Bureau's Opposition to Contingent Informal Request for Stay, filed on August 4, 1993.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Arthur I. Steinberg". The signature is fluid and cursive, with the first name "Arthur" and last name "Steinberg" clearly distinguishable.

Arthur I. Steinberg
Administrative Law Judge